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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-366

ANDREW OVID ORTIZ
1616 Califon Street
Carson, California 90745

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 16, 2005, the Respiratory Care Board of California, (Board) received an application for a Respiratory Care Practitioner License from Andrew Ovid Ortiz (Respondent). On or about April 11, 2005, Andrew Ovid Ortiz certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 22, 2005.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3732, subdivision (b) of the Code states:

8 “The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

12 7. Section 3750 of the Code states:

13 “The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 “ . . .

17 “(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction. . . .”

20 8. Section 3752 of the Code states:

21 “A plea or verdict of guilty or a conviction following a plea of nolo
22 contendere made to a charge of any offense which substantially relates to the
23 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
24 a conviction within the meaning of this article. The board shall order the license
25 suspended or revoked, or may decline to issue a license, when the time for appeal
26 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
27 order granting probation is made suspending the imposition of sentence,
28 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing

1 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
2 setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.”

4 9. Section 3750.5 of the Code states:

5 "In addition to any other grounds specified in this chapter, the board may
6 deny, suspend, or revoke the license of any applicant or license holder who has
7 done any of the following:

8 "(a) Obtained or possessed in violation of law, or except as directed by a
9 licensed physician and surgeon, dentist, or podiatrist administered to himself or
10 herself, or furnished or administered to another, any controlled substances as
11 defined in Division 10 (commencing with Section 11000) of the Health and Safety
12 Code. . . .”

13 10. Section 480 of the Code states:

14 "(a) A board may deny a license regulated by this code on the grounds that
15 the applicant has one of the following:

16 "(1) Been convicted of a crime. A conviction within the meaning of this
17 section means a plea or verdict of guilty or a conviction following a plea of nolo
18 contendere. Any action which a board is permitted to take following the
19 establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting
21 probation is made suspending the imposition of sentence, irrespective of a
22 subsequent order under the provisions of Section 1203.4 of the Penal Code.

23 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
24 substantially benefit himself or another, or substantially injure another; or

25 "(3) Done any act which if done by a licensee of the business or profession
26 in question, would be grounds for suspension or revocation of license.

27 "The board may deny a license pursuant to this subdivision only if the crime
28 or act is substantially related to the qualifications, functions or duties of the business

1 or profession for which application is made.

2 "(b) Notwithstanding any other provision of this code, no person shall be
3 denied a license solely on the basis that he has been convicted of a felony if he has
4 obtained a certificate of rehabilitation under Section 4852.01 and following of the
5 Penal Code or that he has been convicted of a misdemeanor if he has met all
6 applicable requirements of the criteria of rehabilitation developed by the board to
7 evaluate the rehabilitation of a person when considering the denial of a license
8 under subdivision (a) of Section 482. . . ."

9 COST RECOVERY

10 11. Section 3753.5, subdivision (a) of the Code states:

11 "In any order issued in resolution of a disciplinary proceeding before the
12 board, the board or the administrative law judge may direct any practitioner or
13 applicant found to have committed a violation or violations of law to pay to the
14 board a sum not to exceed the costs of the investigation and prosecution of the
15 case."

16 12. Section 3753.7 of the Code states:

17 "For purposes of the Respiratory Care Practice Act, costs of prosecution
18 shall include attorney general or other prosecuting attorney fees, expert witness
19 fees, and other administrative, filing, and service fees."

20 13. Section 3753.1, subdivision (a) of the Code states:

21 "An administrative disciplinary decision imposing terms of probation may
22 include, among other things, a requirement that the licensee-probationer pay the
23 monetary costs associated with monitoring the probation."

24 CAUSE FOR DENIAL OF APPLICATION

25 (Conviction of a Crime)

26 14. Respondent's application is subject to denial under Code sections
27 3750, subdivision (d), 3752 and 480, in conjunction with section 3732, subdivision (b), in
28 that respondent was convicted of a crime substantially related to the qualifications,

functions and duties of a respiratory care practitioner. The circumstances are as follows:

A. On or about August 6, 2004, a complaint was filed against respondent in a criminal proceeding entitled *People v. Andrew Ovid Ortiz*, in Superior Court, Los Angeles County, Case No. 4DW05485. Respondent was charged in the complaint with violating Health and Safety Code section 11357(b), possession of under one ounce of marijuana, a misdemeanor, following the issuance of a citation by the Los Angeles County Sheriff's Department on June 12, 2004.

B. On or about September 15, 2004, respondent was convicted upon his plea of nolo contendere to the crime of possession of under one ounce of marijuana. The court ordered him to pay fines and assessments totaling \$290.00. In lieu of the fine, the sentence allowed Respondent to perform 27 hours of community service.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Andrew Ovid Ortiz for a Respiratory Care Practitioner License;

2. Directing Andrew Ovid Ortiz to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: September 12, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant